

TruePosition

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“ I have some real concerns about how you are using some of those admissions . . . It sounded to me like some of them could only be used for a validity argument or to argue the claim construction that I already rejected. So I just wanted to let you know that I am aware of the mischief that could come from those admissions, and I will publicly correct you if you step over the line that I’ve drawn in this case.”

- The Court

Trial Transcript page 1616



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Read Factor #4:
Andrew's Size and Financial Condition Support
Increased Damages

- “Defendant’s size and financial condition.” *Read*, 970 F.2d at 827.
- Andrew is a \$2 billion company with a diverse product line (PTX 154; Tr. at 358 & 1852)
- Trebling is equal to no more than 7% of Andrew’s revenues for one year (PTX 154)



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Read Factor #5: Damages Should be Increased Because The Case Was Not Close

- “Closeness of the case.” *Read*, 970 F.2d at 827.
- Andrew asserted its defenses in bad faith
- Court and jury rejected each of Andrew’s 10 excuses for its willful infringement



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Andrew's Excuses

- Excuse #1: Technical Non-Infringement
- Raised: In Andrew's Answer
- Status: Rejected By the Jury



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Andrew's Excuses

- Excuse #2: Anticipation
- Raised: In Andrew's Answer
- Status: Rejected on Summary Judgment



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Andrew's Excuses

- Excuse #3: Indefiniteness
- Raised: For the First Time on Summary Judgment
- Status: Rejected on Summary Judgment



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Andrew's Excuses

- Excuse #4: Unfair Competition
- Raised: Andrew's Amended Answer
- Status: Rejected on Summary Judgment



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Andrew's Excuses

- Excuse #5: Government Use Defense
- Raised: For the First Time at Trial
- Status: Rejected by the Jury